Filed 3/5/12 Goradia v. Vega VA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

YOGESH GORADIA et al., Plaintiffs, Cross-defendants and Respondents, v. LIRIO VEGA, Defendant, Cross-complainant and Appellant.	B228128 (Los Angeles County Super. Ct. No. YC049568)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael P. Vicencia, Judge. Affirmed.

Law Offices of M. Jonathan Hayes, M. Jonathan Hayes, Roksana D. Moradi for Defendant, Cross-complainant and Appellant.

Stanley D. Bowman for Plaintiffs, Cross-defendants and Respondents.

Appellant contends that the trial court abused its discretion by granting respondents' postjudgment motion for attorney fees. We find no error in the trial court's decision as respondents were clearly the prevailing parties. Accordingly, we affirm.

FACTUAL BACKGROUND

Appellant's Recitals

According to her opening brief, appellant Lirio Vega purchased a single family residence in Rancho Palos Verdes from respondents Yogesh and Ranjan Goradia in 2002.[1]

The Goradias filed a first amended complaint against Vega and other defendants in November 2004 for foreclosure of deed of trust and injunctive relief. According to the complaint, prior to Vega's purchase, the property was encumbered by two promissory notes and deeds of trust executed by plaintiffs. Concurrent with the conveyance of title in 2002, the Goradias received from Vega and a codefendant (i) an all inclusive deed of trust by which these defendants assumed and agreed to pay the two existing promissory notes; (ii) a promise to provide a promissory note for the total of the first and second notes, in the amount of $882,000; and (iii) an additional purchase money note in the amount of $228,000, which was secured by a deed of trust that had not been notarized or recorded. The complaint alleged that the defendants defaulted on the all-inclusive deed of trust and the purchase money note, and plaintiffs sought a money judgment for the total of these obligations, plus interest and defaulted monthly payments. The complaint

---

[1] California Rules of Court, rule 8.204(a)(1)(C) requires that every reference to a matter in the record be supported with a citation to the volume and page number of the record where the matter appears. Furthermore, California Rules of Court, rule 8.204(a)(2)(C) requires that an appellant's opening brief provide a summary of significant facts "limited to matters in the record." Vega has violated these rules. Although her opening brief contains a lengthy statement of facts, Vega has failed to provide and failed to cite any portion of the record (aside from the Goradias' first amended complaint) for matters occurring prior to the postjudgment request for attorney fees. To provide context to our decision, we restate portions of Vega's deficient statement of facts, without assuming that her statement of facts is correct.

further prayed for foreclosure, with the proceeds of sale to be applied to amounts due to the Goradias.

The case was first tried over two days in October 2006 and January 2007. Judgment was entered in favor of Vega after the trial court found that the Goradias failed to establish a delinquency in payments. We reversed in a nonpublished opinion (*Goradia v. Vega* (Nov. 30, 2007, B198453)), finding that the trial court erred by refusing to allow the Goradias to recall Vega as a witness to establish the delinquency.

According to Vega's opening brief, while the judicial foreclosure matter was pending, the Goradias commenced a nonjudicial foreclosure action against her. Vega herself filed a complaint in December 2007 against the Goradias and their attorney Stanley Bowman (who was also acting as foreclosure trustee) for breach of contract, slander of title, wrongful foreclosure, breach of fiduciary duty, accounting, and preliminary injunction. That action was eventually consolidated with this one. Vega also apparently filed a cross-complaint seeking similar relief as that sought in her December 2007 complaint.

In her brief, Vega contends that she successfully fought to have the Goradias' nonjudicial foreclosure proceeding stopped. She further states that in April 2008 the trial court appointed an accountant to determine the amount owed to the Goradias. Vega contends that the Goradias had demanded a total of approximately $1,435,000, but, in February 2009, the trial court entered an order based on the accountant's report finding that the amount required to cure all existing deficiencies or defaults was $253,292.73.

The Judgment

The trial was conducted over numerous days in October and December 2008, February 2009, and March 2010. Judgment was finally entered in favor of the Goradias in June 2010. The trial court found that Vega and her codefendant (who did not appear and whose default was taken) defaulted on the all-inclusive deed of trust and underlying

loans secured thereby, as well as the $228,000 purchase money note.[2] The default amount owed by defendants was $253,292.73 for shortfalls on the loans. The court also found that Vega was liable for the principal balance on the purchase money note in the full amount of $228,000, plus interest. The court further determined that, while the technical requirements for securing each of the loans on the property were not met, it was the intent of the parties that all loans be secured by the property, and therefore judicial foreclosure was proper.

As for the claims brought by Vega, the trial court found that Vega failed to prove each of her causes of action, except those for accounting and preliminary injunction. However, because the court had already entered an order on the accounting, the cause of action for accounting was moot, and, because the court ordered a judicial foreclosure, the injunction enjoining a nonjudicial foreclosure was moot.

The judgment ordered that a foreclosure sale could be held. Any purchaser at foreclosure was to take the property subject to the first loan on the property. The Goradias would be allowed to credit bid up to the amount of all sums owing to them under the all-inclusive deed of trust and the purchase money note (totaling $501,052.73), plus their attorney fees and costs. The judgment stated: "There shall be no deficiency judgment against Defendants should the proceeds of the judicial foreclosure sale be less than the amount obtained through sale." Finally, it was ordered that Vega would take nothing by way of her complaint and cross-complaint.

Motions for Attorney Fees

Both the all-inclusive deed of trust and the purchase money note contained attorney fees clauses. The all-inclusive deed of trust provided that Vega would be responsible for paying the Goradias' reasonable fees in any proceeding affecting the security of the deed of trust, and in any suit brought to foreclose the deed. The purchase

---

[2] By our own motion, we augment the record to include the judgment. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

money note provided that if suit was commenced to collect on the note, the amount of reasonable attorney fees would be added to the note.

Following entry of judgment, the Goradias brought a motion seeking a determination that they were the prevailing party in the action and were entitled to attorney fees in the total amount of $382,697.80. In support of their motion, the Goradias submitted billing records from the three sets of lawyers they employed over the course of the case, from 2004 to 2010.

Soon after the filing of the Goradias' motion, Vega brought her own motion for attorney fees, claiming that she was the prevailing party and should be awarded $298,185. Vega argued that she prevailed on her cause of action for injunctive relief because she stopped the Goradias' efforts to foreclose nonjudicially, and that she prevailed on her action for accounting because the accountant's report accepted by the court yielded a smaller amount required to cure all deficiencies and defaults than what was argued by the Goradias.

Both motions for attorney fees were heard on August 31, 2010. At the hearing, the trial court summarized the case in pertinent part as follows: "On the trial of the Goradias for judicial foreclosure the court found that judicial foreclosure was appropriate and granted the Goradias the relief they requested. The second part of the trial dealt with Miss Vega's claims for wrongful foreclosure and other claims ancillary to both . . . foreclosure and to the conduct of the parties during the life of their contract together for the purchase of this property. In that case, the court found for the defendant, the Goradias. It appears clear to me that as for the issue that runs through all . . . of these motions, that the Goradias are the prevailing parties notwithstanding Miss Vega's success in obtaining the relief she requested in stopping the nonjudicial foreclosure. In all other regards the Goradias are the prevailing party and are, therefore, the prevailing parties for the purposes of the motion for attorney's fees." Later in the hearing, the court stated: "At the end of the day after both trials [the Goradias] are getting the property back. [A]nd [Vega] is not and she wanted to keep the property and she wanted damages for the alleged wrongful acts of the Goradias during the course of this relationship. She got none

of those things and they got the property, so how could the court conclude anything other than the Goradias received the greatest relief?"

Nevertheless, the trial court found that it was appropriate to consider that a substantial amount of litigation involved the Goradias' asserted right to a nonjudicial foreclosure. Since Vega was successful in stopping the nonjudicial process, the court reduced the amount of attorney fees awarded by $50,000. The posthearing minute order stated that the Goradias' motion was granted and "attorney fees in the sum of $332,697.80 are approved. [¶] . . . [¶] Court orders the clerk to amend the judgment by interlineation to show the above amounts. "

DISCUSSION

Vega appeals only from the postjudgment order awarding attorney fees.

Civil Code section 1717, subdivision (a) states in relevant part as follows: "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." Code of Civil Procedure sections 580c and 730 provide that in cases of judicial foreclosure the trial court shall fix the amount of reasonable attorney fees charged to the debtor. (*Bruntz v. Alfaro* (1989) 212 Cal.App.3d 411, 420.)

Vega does not dispute that there was a valid contractual basis to seek attorney fees in this case. She argues, however, that the trial court erred by awarding fees to the Goradias. In making this argument, Vega relies on the same theories as she did in the trial court. None of them is persuasive.[3]

---

[3] In her reply brief, Vega contends that the Goradias' respondents' brief was untimely and should be disregarded. Since we find that the brief was not untimely pursuant to California Rules of Court, rule 8.220, we decline to strike it. If the brief were disregarded, however, this would not result in an automatic reversal. Even when no

I. <u>The trial court properly found that the Goradias were the prevailing parties</u>.

Vega's continued insistence that she was the prevailing party is puzzling. The Goradias sought foreclosure. Vega fought foreclosure. After a lengthy trial, the court entered a judgment of judicial foreclosure. Vega never appealed from the judgment. She simply argues that, in spite of the language of the judgment, she was the prevailing party.

Vega's argument is made even less tenable by the stringent standard of review we employ on this appeal. The trial court is given broad discretion to determine the prevailing party. (*Hunt v. Fahnestock* (1990) 220 Cal.App.3d 628, 633.) We do not disturb the trial court's determination unless a clear abuse of discretion exists. (*Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 349.)

We find no abuse of discretion. Vega contends that since she was successful in stopping the Goradias' efforts at nonjudicial foreclosure, she was the prevailing party in the litigation. There are many problems with this argument. One problem is that the argument ignores the rule that a beneficiary of a deed of trust may concurrently pursue both nonjudicial and judicial foreclosure. (*Vlahovich v. Cruz* (1989) 213 Cal.App.3d 317, 322.) The Goradias were not estopped from pursuing judicial foreclosure just because they also attempted to foreclose nonjudicially.

Furthermore, Vega was not the prevailing party simply because she was able to stop the nonjudicial foreclosure. At most, this was a preliminary victory. A party who obtains only interim success is not entitled to a Civil Code section 1717 fee award. (See *Estate of Drummond* (2007) 149 Cal.App.4th 46.)

Moreover, the trial court *recognized* that both sides incurred attorney fees in connection with the unsuccessful attempt at nonjudicial foreclosure. Accordingly, the trial court reduced the fee award by a substantial amount—$50,000. This was a proper exercise of its discretion. (See *Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111 [apportionment of a fee award is a matter within the trial court's discretion].)

---

respondent's brief is filed, the appellant still "has the affirmative burden to show error." (*In re Marriage of Davies* (1983) 143 Cal.App.3d 851, 854.)

Finally, Vega's argument ignores the stark realities of the case. In determining litigation success, trial courts are authorized to focus on substance rather than form, and award fees to the party who achieves its main litigation objective. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 877; *Pacific Custom Pools, Inc. v. Turner Construction Co.* (2000) 79 Cal.App.4th 1254, 1272.) Clearly, the objective was accomplished here. The Goradias obtained a judgment that would allow them to foreclose on the house, and they successfully defended the claims made by Vega, which were either denied or found moot.

We are not persuaded by Vega's argument that the trial court should have placed more emphasis on its determination that the deficiency amount was less than that contended by the Goradias. We also find it immaterial that the Goradias were unable to obtain a monetary recovery. In deciding which party prevailed, the trial court is to determine "who recovered a greater relief in the action on the contract." (Civ. Code, § 1717, subd. (b).) "The 'greater relief' obtained by a party does not necessarily mean greater monetary relief." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1120.) Although the Goradias may have lost some preliminary battles, they won the war. The trial court was correct in determining that foreclosure was the main issue in the case, and on balance the Goradias were clearly the prevailing parties.

II. <u>Civil Code section 2924c, subdivision (d) did not apply</u>.

Vega next argues that Civil Code section 2924c, subdivision (d) limited the amount of attorney fees that could be awarded. The provision reads, in pertinent part: "Trustee's or attorney's fees which may be charged pursuant to subdivision (a), or until the notice of sale is deposited in the mail to the trustor as provided in Section 2924b, if the sale is by power of sale contained in the deed of trust or mortgage, or, otherwise at any time prior to the decree of foreclosure, are hereby authorized to be in a base amount that does not exceed three hundred dollars ($300) if the unpaid principal sum secured is one hundred fifty thousand dollars ($150,000) or less, or two hundred fifty dollars ($250) if the unpaid principal sum secured exceeds one hundred fifty thousand dollars ($150,000), plus one-half of 1 percent of the unpaid principal sum secured exceeding

fifty thousand dollars ($50,000) up to and including one hundred fifty thousand dollars ($150,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars ($150,000) up to and including five hundred thousand dollars ($500,000), plus one-eighth of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars ($500,000). Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where the charge does not exceed the amounts authorized herein."

While Vega is correct that Civil Code section 2924c, subdivision (d) can apply in cases of judicial foreclosure (see *Bruntz v. Alfaro*, *supra*, 212 Cal.App.3d at p. 419), her assertion that the provision applied here is incorrect. Civil Code section 2924c, subdivision (a)(1) allows a debtor to cure default on a deed of trust and obtain reinstatement of same by paying the entire amount due under the deed of trust (other than any accelerated portion), including attorney fees as provided by Civil Code section 2924c, subdivision (d). Thus, subdivision (d) applies when the debtor seeks to cure a default and avoid foreclosure; it limits the amount of attorney fees that the debtor must pay to accomplish this purpose. (*Bruntz v. Alfaro*, *supra*, 212 Cal.App.3d at p. 420.)

In contrast, when the action actually proceeds to a decree of foreclosure, the trial court is authorized to award all reasonable attorney fees if provided for in the note, deed of trust, or mortgage (as the all-inclusive deed of trust and the purchase money note did here). (*Ibid.*; Civ. Code, §2924c, subd. (e).) This case proceeded well past the stage of Vega seeking to cure the default. The trial court actually issued a decree of foreclosure, and therefore the amount of attorney fees that could be awarded was not limited by Civil Code section 2924c, subdivision (d).

III. <u>No abuse of discretion is apparent with regard to the amount of fees awarded</u>.

Finally, Vega argues that the attorney fee award was too high. As with its determination of which party prevailed, the trial court is accorded broad authority to determine the amount of reasonable fees. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) In keeping with this standard, it is well recognized that "[t]he

'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.'" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

Vega's contention that there was no evidence of the amount of fees incurred or paid by the Goradias is meritless. The record contains detailed billing statements that formed the basis of the trial court's fee award. Having submitted evidence of the amount of fees charged, the Goradias were not required to submit cancelled checks or other evidence showing they paid their lawyers' bills. (See *West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 707 ["the fact that a fee was not paid is no evidence that it has not been earned and that the client is not obligated to pay it"].)

Similarly lacking in merit is Vega's contention that expert evidence was required to establish the reasonableness of the attorney fees. "The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623-624.) We find no abuse of discretion by the trial court here. The hourly rates charged by the Goradias' various attorneys—ranging from $225 to $300—do not appear to be unreasonable. Neither did the amount of work expended in the case, which lasted well over five years by the time judgment was entered. Indeed, the amount of fees requested by Vega herself was not significantly less than the amount awarded to the Goradias.

As for Vega's argument that we should find certain fees charged by Attorney Stanley Bowman improper, we are unable to do so given the meager record submitted on appeal. Vega maintains that Bowman was disqualified as the Goradias' counsel in June 2009 because of a conflict of interest, since Bowman was defending the Goradias while

he was also a defendant in the action brought by Vega. Vega contends that Bowman's billing records did not segregate time he spent as foreclosure trustee, from time he spent representing the Goradias, from time he spent defending himself. We are unable to determine if there was any improper billing, however. The complaint(s) against Bowman have not been made part of the record, so we do not know the bases for any claims made. Nor do we have any of the disqualification papers or any related orders, or any other documents that might allow us to decide that Bowman charged for services outside of a proper scope of representation. Vega would require us to guess at which charges, if any, were improper, a step we are not willing to take. "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) A failure to set forth material evidence is deemed a waiver of error. (*Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 843.) Vega has failed to submit evidence sufficient to show that any of the charges were improper.

DISPOSITION

The August 31, 2010 order on motions for fees and costs is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.